

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Public Record Requests for Legal Documents
(LAC 33:I.2007 and 2305) (OS074)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Office of the Secretary regulations, LAC 33:I.2007 and 2305 (Log #OS074).

This rule clarifies that regulations in LAC 33:I.Chapter 23 for public record requests apply to copies made as a direct result of suit for judicial review of an LDEQ decision (typically a permit decision). Suits for judicial review require preparation of an administrative record of decision by the Legal Affairs Division in accordance with LAC 33:I.Chapter 20. Once the administrative record of decision is compiled and indexed, a certified copy is prepared for filing with the court. Often, the person filing suit wants an additional copy of the record being filed for his own use. If an appeal to the First Circuit Court is taken, then an additional copy of the index and record must be filed with that court. All of these copies must be paid for, in accordance with state law. Clarifying that Chapter 23 applies to these records provides authority to charge for copies prepared for filing with a court at the reduced rate. The basis and rationale for this proposed rule are to ensure compliance with state law when providing the public with copies of public records, including when copies are made for submission to a court.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on November 28, 2006, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by OS074. Such comments must be received no later than December 5, 2006, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of OS074. This regulation is available on the Internet at www.deq.louisiana.gov under Rules and Regulations, Monthly Regulation Changes.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

Title 33 ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures

Chapter 20. Records of Decision for Judicial Review

§2001. Scope and Purpose

A. ...

B. The copying, assembly, and lodging of a record of decision with a court of competent jurisdiction pursuant to an appeal or other request for judicial review of an agency decision or other department action shall be considered a public records request in accordance with LAC 33:I.Chapter 23.

1. The cost, in accordance with LAC 33:I.Chapter 23, of the preparation of a record of decision for lodging with the court shall be borne by the person seeking judicial review unless otherwise assigned by the court.

2. In the event of conflict between the requirements of LAC 33:I.Chapter 23 and this Chapter, the requirements of this Chapter shall apply.

BC. These regulations do not apply to matters handled by the Department of State Civil Service, Division of Administrative Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular, 2050.20.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:857 (May 1999), amended by the Office of the Secretary, Legal Affairs Division, LR 33:**.

Chapter 23. Procedures for Public Record Requests

§2305. Standard Operating Procedures

A. All requests for copies of public records, including discovery requests, ~~and~~ subpoenas duces tecum for production of public records, and the preparation of a record of decision pursuant to LAC 33:I.Chapter 20, shall be made using LDEQ Form ISD-0005-01. A certification on LDEQ Form ISD-0005-02 shall be submitted with ~~the~~ a request for free or reduced rate copies. Completed forms may be submitted in person, by mail, by facsimile, or ~~other~~ by another approved method. No other form of request will be honored. Copies of the forms may be obtained through the department's website or from the department's custodian of records.

B. Payment shall be made in accordance with the rates established in this Chapter.

C. Advance payment is required, except for a request for an administrative record of decision required to be lodged with a court. Payment shall be made only by check or money order made payable to the Department of Environmental Quality. The department does not accept cash.

D. In order to ensure the preservation of department records, no records shall leave the premises, whether accompanied by agency personnel or otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:950 et seq. and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Management and Finance, Fiscal Services Division, LR 25:429 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2442 (November 2000), LR 29:702 (May 2003), amended by the Office of Environmental Assessment, LR 30:2020 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:**.

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**LOG #: OS074

Person

Preparing

Statement: Sharon Parker Dept.: Environmental QualityPhone: 219-3559 Office: Office of the SecretaryReturn Address: P.O. Box 4302 Rule Title: Public Records Requests for Legal Documents (LAC 33:I.2007 and 2305)
Baton Rouge, LADate Rule Takes Effect: Upon promulgation**SUMMARY**

(Use complete sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no fiscal impact as a result of this proposed rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no fiscal impact as a result of this proposed rule. This rule clarifies the application of fees to this segment of requests as are currently being charged by the department.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

There will be no fiscal impact as a result of this proposed rule to the regulated community or non-governmental groups. This rule clarifies the application of fees to this segment of requests as are currently being charged by the department

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition or employment as a result of this proposed rule.

Signature of Agency Head or Designee

Legislative Fiscal Officer or Designee

Herman Robinson, CPM, Executive Counsel
Typed Name and Title of Agency Head or Designee

Date of Signature

Date of Signature

LFO 03/09/2001

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

The following information is requested in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriate legislative oversight subcommittee in its deliberation on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption, or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the notice of intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of both the current and proposed rules with amended portions indicated).

This amendment is needed to clarify that LAC 33:I.Chapter 23, governing procedures for public records requests to the department, applies to copies made as a direct result of suit for judicial review of a department decision (typically a permit decision). Suits for judicial review require preparation of an administrative record of decision (by the Legal Affairs Division in accordance with LAC 33:I.Chapter 20). Once the record of decision is compiled and indexed, a certified copy is prepared for filing with the court. Often, the person filing suit wants an additional copy of the record being filed for his or her own use. If an appeal to the First Circuit Court is taken, then an additional copy of the index and record must be filed with that court. In accordance with state law, all copy requests must be assessed a fee.

- B. Summarize the circumstances which require this action. If the Action is required by federal regulation, attach a copy of the applicable regulation.

The proposed rule clarifies that public records copy fees apply to copies of all records maintained or prepared by the department, even if prepared for filing with a court.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session

(1) Will the proposed rule change result in any increase in the expenditure of funds? If so, specify amount and source of funding.

No expenditure of funds will result as a result of this proposed rule.

(2) If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?

(a) ____ Yes. If yes, attach documentation.

(b) ____ No. If no, provide justification as to why this rule change should be published at this time.

This question is not applicable.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM THE ACTION PROPOSED

1. What is the anticipated increase (decrease) in costs to implement the proposed action?

COSTS	FY 06-07	FY 07-08	FY 08-09
PERSONAL SERVICES	-0-	-0-	-0-
OPERATING EXPENSES	-0-	-0-	-0-
PROFESSIONAL SERVICES	-0-	-0-	-0-
OTHER CHARGES	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-
MAJOR REPAIR & CONSTR.	-0-	-0-	-0-
POSITIONS (#)	-0-	-0-	-0-

2. Provide a narrative explanation of the costs or savings shown in "A.1.", including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

There will be no cost or savings as a result of the proposed rule.

3. Sources of funding for implementing the proposed rule or rule change.

SOURCE	FY 06-07	FY 07-08	FY08-09
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
DEDICATED	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
OTHER (Specify)	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

There will be no cost to the department for the implementation of this rule.

B. COST OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.

1. Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.

There will be no impact to local governmental units from this proposed action.

2. Indicate the sources of funding of the local governmental unit which will be affected by these costs or savings.

Sources of funding for local governments will not be affected.

FISCAL AND ECONOMIC IMPACT STATEMENT

WORKSHEET

II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS

A. What increase (decrease) in revenues can be anticipated from the proposed action?

REVENUE INCREASE/DECREASE	FY 06-07	FY 07-08	FY08-09
STATE GENERAL FUND	-0-	-0-	-0-
AGENCY SELF-GENERATED	-0-	-0-	-0-
RESTRICTED FUNDS*	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-
LOCAL FUNDS	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-

*Specify the particular fund being impacted.

B. Provide a narrative explanation of each increase or decrease in revenues shown in "A." Describe all data, assumptions, and methods used in calculating these increases or decreases.

No increase or decrease in revenues will result from this proposed rule. This rule clarifies the application of fees to this segment of requests as are currently being charged by the department.

III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS

A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.), they may have to incur as a result of the proposed action.

There will be no cost or economic benefit to the regulated community or nongovernmental groups as a result of this proposed rule. This rule clarifies the application of fees to this segment of requests as are currently being charged by the department.

B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.

There will be no impact on receipts or income of these groups.

IV. EFFECTS ON COMPETITION AND EMPLOYMENT

Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.

There will be no effect on competition or employment by the proposed rule.